STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois, and Ameritech Illinois	)	
Metro, Inc.	)	
	)	Docket No. 98-0555
Joint Application for Approval of the	)	
Reorganization of Illinois Bell Telephone	)	
Company d/b/a Ameritech Illinois, and	)	
the Reorganization of Ameritech Illinois	)	
Metro, Inc. in Accordance with Section	)	
7-204 of the Public Utilities Act and for	)	
All Other Appropriate Relief	)	(Reopened)

BRIEF ON EXCEPTIONS IN RESPONSE TO PROPOSED ORDER ON REOPENING OF MCI WORLDCOM, INC.

Pursuant to Section 200.830 of the rules of practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Admin. Code Section 200.830, and the briefing schedule established Hearing Examiners' Proposed Order on Reopening ("HEPOR" or "Proposed Order on Reopening") issued in this matter on August 10, 1999, MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits this brief on exceptions in the above-captioned matter.

I. Introduction

In the reopened phase of this proceeding, the Commission sought information that In letters from the Chairman of the Commission to the presiding Hearing Examiners dated June 4, June 15 and July 9, 1999, specific questions were posed regarding the merger's likely impact on local competition, potential conditions that might be placed on the merger to protect consumers and allow for timely local competition, and certain commitments that the Joint Applicants made in their Amended Application. The purpose of the questions was to elicit from the parties to the proceeding during the reopening phase focused, detail-oriented information regarding specific conditions that would address, among other things, concerns about protecting consumers and ensuring implementation of timely local competition in the local exchange market -- conditions which would allow the Commission to make the statutory findings that it is obligated to make under Illinois law. Throughout oral arguments and deliberations in this matter, the

Commission has made clear that it is particularly concerned about the mergers likely impact on residential and small business customers and their ability to enjoy the benefits of competitive alternatives for local exchange service.

Unfortunately, the Hearing Examiners' Proposed Order on Reopening ("HEPOR") almost without exception adopts the "voluntary commitments" that the Joint Applicants offer up in support of their application. The voluntary commitments are vague, ambiguous, illusory and generally provide nothing more than a promise to do what the Joint Applicants are already required to do by law and even then are weighted down by so many exceptions as to be rendered meaningless. Moreover, many of the commitments call for after-the-fact "collaborations" in which Joint Applicants optimistically suggest that the parties should be able to negotiate and agree on matters noting that if they don't they can always exercise their right to arbitrate. In short, the voluntary commitments which form the centerpiece of the Joint Applicants' case on reopening constitute nothing more than a decorative object that lacks substance -- they simply do not provide a basis for a Commission finding that the merger is not likely to have a significant adverse effect on competition in Illinois. The burden is on the Joint Applicants to demonstrate that they have met the requirements of Illinois law, including Section 7-204(b)(6). The voluntary commitments which were entered into the record on reopening fail to demonstrate by a preponderance of the evidence that the merger is not likely to have a significant adverse effect on competition in Illinois, especially with respect to residential and small business customers.

In stark contrast to the vague, ambiguous, illusory and confusing voluntary commitments that the upon which the HEPOR relies, the record on reopening is replete with testimony and evidence submitted by Competitive Local Exchange Carriers ("CLECs") which provides focused, detail-oriented information regarding specific conditions that would address, among other things, concerns about protecting consumers and ensuring implementation of timely local competition in the local exchange market. MCI WorldCom submits that the only manner in which the Commission can make the requisite findings under Section 7-204(b)(6) is by adopting conditions suggested by the CLECs and requiring that those conditions, to the greatest extent possible, be met prior to the consummation of the merger. Because the HEPOR adopts voluntary commitments which virtually ensure that residential and small business

customers will not enjoy the benefits of competition for local exchange services, it cannot be adopted in its current form and provide the Commission with the bases it needs to make the statutory findings that it is obligated to make under Illinois law.

II. Exception Number One: The HEPOR Erred by Unreasonably Limiting its Analysis to Application of the DOJ Merger Guidelines and by Ignoring Evidence Concerning the Likely Impact on Competition

Although it claims to use the Department of Justice ("DOJ") merger guidelines only as a starting point for its analysis of whether the merger is likely to have a significant adverse effect on competition, the HEPOR relies almost exclusively on an analysis based on the DOJ guidelines. HEPOR, pp. 27 - 31. The HEPOR does not follow through on its promise to have the Commission "fulfill [its] mandatory duties under Section 7-204(b)(6) to consider all effects that the proposed merger is likely to have on competition." *Id.*, P. 28. To the extent that the HEPOR claims to evaluate the question of whether the merger is likely to inhibit the market's transition to competition and increase the market's barriers to entry, it falls short of its goal and ignores record evidence. As a result, the HEPOR incorrectly concludes that "[t]here is, however, no conclusive evidence to show that the proposed merger will inhibit the ability of competitive carriers to enter the market and to increase their supply of the goods" and that "[w]e also do not believe that the proposed merger will increase the market's barriers to entry preventing competitive carriers from entering or expanding the supply of goods." *Id.*, p. 29.[1]

MCI WorldCom presented extensive evidence through the testimony of Ms. Sherry Lichtenberg and Ms. Joan Campion regarding the necessary components that must be in place to ensure that the merger would not likely have a substantial adverse impact on local competition. Unlike any party to this proceeding, MCI WorldCom presented unrebutted evidence of what it takes to provide service to

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[1] MWCOM takes exception to the assertion in the fourth full paragraph on page 30 which says that MWCOM has "ILEC experience." That assertion is flat wrong. In all respects, MWCOM and its subsidiaries are and always have been competitive companies that have tried to break into markets monopolized by ILECs. To the extent that MWCOM's exceptions are not adopted, at the very least the Commission should strike this errant and wholly unsupported assertion from any order it may issue.

residential and small business customers on a mass market basis, describing in detail its experiences in rolling-out such services in New York where MCI WorldCom has sold in excess of 100,000 residential customer lines on a state-wide basis. MWCOM Ex. 3.0 (Lichtenberg Rebuttal on Reopening), pp. 13-14.

Ms. Lichtenberg's testimony explained in detail that carriers, if they are expected to be able to roll-out services to residential and small business customers, need immediate and unrestricted access to Unbundled Network Element Platform ("UNE Platform" or "UNE-P") in addition to Operations Support Systems ("OSS") capable of supporting UNE combinations, including UNE Platform. To this end, Ms. Lichtenberg described the necessity of the immediate development, third party and carrier-to-carrier testing and implementation of OSS, recommending in direct response to one of the Chairman's questions that the Commission require third party testing based on the New York model and to engage KPMG as the third party tester. *Id*., pp. 29-31. Instead of relying upon after the fact promises, MCI WorldCom urged the Commission to require that Ameritech provide immediate access to shared transport and UNE-P and allow CLECs to migrate existing resale customers to UNE-P and sell new services provided through UNE-P to customers prior to the completion of the merger. *Id.*, p. 4. Ms. Lichtenberg's unrebutted testimony is that absent UNE-P and appropriately tested and implemented OSS to support it, provision of competitive local services to residential and small business customers on a mass market basis will be impossible for the foreseeable future.

In contrast, the Joint Applicants Illinois-specific voluntary commitments make no mention of provision of UNE-P or the reasons why it has not been provided to date. Indeed, the comparison chart of Illinois and FCC commitments attached to Joint Applicant witness Mr. Kahan's testimony illustrates that no commitment on UNE combinations, including UNE-P, was made in Illinois. SBC-Ameritech Ex. 1.5 (Kahan Rebuttal on Reopening), Schedule 3, pp. 28-29. That testimony also indicates that whatever the commitment is to the FCC in terms of UNE combinations will be severely restricted, with a total cap of 302,000 lines that can be served in Illinois via combinations and resale. *Id.* So even assuming that the Joint Applicants provide some access it will represent access to less than 5% of the approximately 7 million total lines that Ameritech serves in Illinois. Tr., p. 2076. Thus, the record is clear that the voluntary commitments that Joint Applicants have made would not ensure that the local market is open;

to the contrary they would protect in excess of 95% of Ameritech Illinois' local exchange market. That clear record evidence cannot provide a basis upon which the Commission can find there will likely be no substantial adverse impact on local exchange competition in Illinois. MCI WorldCom submits that such evidence shows conclusively that, based on the record, what the Joint Applicants have proposed would indeed have a substantial adverse impact on local competition. The HEPOR ignores this evidence.

In addition to ignoring evidence with respect to availability of UNE-P and OSS that can support UNE-P, the HEPOR overlooks evidence about other pre-conditions that MCI WorldCom and other CLECs testified are needed prior to a finding that Section 7-204(b)(6) can be satisfied. Those pre-conditions include, among other things, immediate and on-going provisioning of UNEs including xDSL equipped loops, loop-transport combinations, shared transport, and subloop unbundling regardless of what the FCC may require in its Section 319 remand proceeding. In addition, with respect to non-recurring charges for all UNEs, permanent pricing for shared transport and pricing for network element combinations, the Commission was urged to require those issues are to be resolved expeditiously in Phase 2 of the Ameritech TELRIC proceeding. Until the proceeding is completed, the Commission was urged to prohibit any "glue" charges for UNE-P and require Ameritech Illinois to reduce all stand alone non-recurring charges for individual UNEs that Ameritech had proposed in the original TELRIC proceeding by 50% until such time as permanent non-recurring charges can be established. MWCOM Ex. 4.0 (Campion Rebuttal on Reopening), pp. 11, 17-18. The foregoing are examples of the types of focused, specific conditions and information that the Commission sought in the record on reopening, but which the HEPOR ignored.

Exception Number One Replacement Language:

For the reasons discussed above, the conclusions in the HEPOR should be modified so that it is clear that the record on reopening does not support a finding that the merger would satisfy the requirements of Section 7-204(b)(6) of the Illinois Public Utilities Act ("IPUA") absent significant and substantial pre-conditions being met. Accordingly, MCI WorldCom suggests that all of the language

under the "Commission Analysis and Conclusion" section beginning at page 27 and continuing through page 31 should be stricken and replaced with the following language:

Section 7-204(b)(6) requires the Commission to ascertain that the merger "is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction." As a general matter, we have jurisdiction over four distinct markets -- local exchange, intraMSA toll, interMSA toll, and to a lesser extent, cellular -- to the extent these markets affect intrastate communications in Illinois. Of course, each of the broadly defined markets over which we have jurisdiction are made up of specific market segments. For example, throughout this proceeding parties have referred to residential and business customers. Indeed, we expressed particular concern with respect to the impact that this proposed merger is likely to have on residential and small business customers and their ability to choose carriers for wireline local exchange service. Given our concerns with respect to the local exchange residential and small business markets, we concentrate our 7-204(b)(6) analysis in this area.

As for the broadly defined markets over which the Commission has jurisdiction, we agree with Staff and Joint Applicants that the merger is not likely to affect the Illinois interMSA market adversely. We agree with Staff that the proposed merger would not impact adversely the number of buyers and sellers of interMSA toll services; the standardization of those services; the ability to enter the interMSA toll market; or the amount of information available to buyers and sellers.
With respect to the wireless market we are satisfied with Staff's proposal that Joint Applicants be required to send notice to customers of the divested cellular affiliate before sale of the affiliate and find it to be reasonable. We see no reason why it would delay consummation of the merger.

On the question of whether SBC is an actual potential competitor in Illinois, the Joint Applicants propose that we use the DOJ's merger Guidelines as a framework for our analysis. Staff agrees that it would be reasonable for us to use these Guidelines only as an information tool to guide our analysis of the proposed merger pursuant to the Actual Potential Competition doctrine. In other words, Staff urges that we not strictly apply the standards contained in the Guidelines on this issue, and that we not limit our analysis to the Actual Potential Competition doctrine. We concur with Staff in these respects. We do not limit our analysis of the proposed merger's likely effects on competition under the Actual Potential Competition doctrine. In order to properly fulfill our mandatory duties under subsection 7-204(b)(6) we must consider all effects that the proposed merger is likely to have on competition.

Accordingly, we will consider all arguments advanced by the Staff and intervenors as to why the proposed merger is likely to have an adverse effect on competition, e.g., that the proposed merger is likely to inhibit the market's transition to competition and to increase the market's barriers to entry. Not only do we find that Section 7-204(b)(6) requires us to consider these positions; but, these positions were undeniably found to be the means by which mergers of local exchange carriers can have adverse effects on competition by the FCC in its review of other mergers involving telecommunications carriers. Accordingly, we will consider the record in its entirety in making our determinations with respect to Section 7-204(b)(6).

We recognize the general concept that competition only develops when competitive firms are able to enter a market and expand the supply of good that is being provided. In these premises, Ameritech Illinois' dominant market share must be eroded by the entry of competitive carriers and an expansion of their supply of goods. It is uncontested on the record of this proceeding that the wireline residential and small business customer market is highly concentrated. The record on reopening is replete with evidence that shows that the proposed merger, when viewed within the context of commitments that the Joint Applicants have made to this Commission, the FCC and other state commissions, will inhibit

the ability of competitive carriers to enter the market and to increase their supply of the goods for residential and small business customers. We also believe that the proposed merger will increase the market's barriers to entry preventing competitive carriers from entering or expanding the supply of the goods for residential and small business customers.

On reopening, the Joint Applicants, Staff and intervenors filed testimony on the issues of local market competition, merger costs and savings allocations and potential conditions. With respect to the local competition issues, we have a potpourri of commitments and proposed conditions before us. The Joint Applicants submitted what they refer to as "additional commitments" regarding, among other things, Illinois-specific interconnection, shared transport, Operational Support Systems ("OSS"), performance measuring benchmarks and compliance. See Amended Joint Application, Exhibits 5 and 6. The Joint Applicants also entered into the record commitments that they have made to the Federal Communications Commission ("FCC") in connection with their application to the FCC for approval of the proposed merger. In addition, the record contains details regarding commitments that SBC voluntarily negotiated with the Staff of the Public Utility Commission of Texas and competitive local exchange carriers ("CLECs") to open the local exchange market to competition in SBC's service territory in Texas. See Cross Exhibit A (Texas Memorandum of Understanding, to Project No. 16251, Public Utility Commission of Texas, submitted April 26, 1999). Intervenors suggested a wide variety of proposed conditions. The question we are faced with at this juncture is whether the newly supplemented record is sufficient to demonstrate that proposed merger is not likely to have a significant adverse effect on competition in the local market in Illinois. As discussed below, we are unable to answer that question in the affirmative and therefore will require that specific conditions be met prior to the merger closing. Without imposing such requirements, we cannot make the requisite finding that the merger is not likely be a significant adverse effect on competition in the local exchange market in Illinois.

Various commitments made by the Joint Applicants with respect to availability of unbundled network element ("UNE") combinations, including the UNE platform, and Operational Support Systems ("OSS") give rise to serious concerns about the Joint Applicants' attitudes toward opening the local market competition. Despite unrebutted CLEC testimony about the importance of these issues to local competition in residential and small business markets, the Joint Applicants provide little assurance that these critical items will be made available in any meaningful way or in a timely manner. We believe that the Illinois-specific commitments as well as the FCC commitments made by the Joint Applicants fail to demonstrate by a preponderance of the evidence that the merger will not likely have a significant adverse effect on competition in the local exchange market in Illinois.

For instance, there is no Illinois commitment that Joint Applicants will provide UNE combinations, including the UNE platform. Conversely, while the FCC commitments apparently provide for some availability of UNE combinations, those commitments restrict to 302,000 the of residential lines in Illinois that can be served using UNE combinations and resale. See SBC-Ameritech Ex. 1.5 (Kahan Rebuttal on Reopening), Schedule 3, p. 28-29. Assuming that the Joint Applicants provide some access to UNE combinations, the record indicates that such access at most will represent choice for less than 5% of the approximately 7 million total lines that Ameritech serves in Illinois. Tr., p. 2076. Thus, the record is clear that the voluntary commitments that Joint Applicants have made would not ensure that the local market is open; to the contrary they would protect in excess of 95% of Ameritech Illinois' local exchange market. That clear record evidence cannot provide a basis upon which we can find there will likely be no substantial adverse impact on local exchange competition in Illinois.

It is notable that in contrast to the Illinois and FCC commitments, SBC in Texas has committed to provide combinations of UNEs at TELRIC prices for business customers for 2 years and for residential customers for three years. See Cross Ex. A (Texas Memorandum of Understanding), pp. 26-27. Significantly, the time line for provision of the combinations of UNEs in Texas appears to occur directly following or in close proximity to the successful completion of third part testing of SBC's OSSs. See

Cross Ex. A (Texas Memorandum of Understanding), pp. 2, 4, 39-40. In addition, whatever the value there is in the Joint Applicants' so-called Illinois interconnection commitments is eviscerated by the exceptions to the commitments. SBC-Ameritech Ex. 1.3 (Kahan Direct on Reopening), pp. 6-15; Tr., pp. 1856-1862. Particularly troubling is the Joint Applicants' refusal to allow CLECs to request and receive without having to go to arbitration provisions of interconnection agreements that SBC has arbitrated with carriers in other states. From our perspective, various arbitrated agreements or individual provisions of arbitrated agreements that CLECs find desirable may represent "best practices" for ensuring that timely and effective competition reaches the local market in Illinois. Allowing the importation of such provisions without requiring arbitration does not, as Joint Applicants appear to believe, require this commission to abrogate its authority to other state commissions.

In addition, we have significant concerns about the viability of the OSS commitments made by the Joint Applicants and what they mean for local competition in Illinois. It is uncontested that OSS is critical to the ability of CLECs to provide service in any meaningful way to residential and small business customers at commercial volumes. Yet the Joint Applicants' Illinois commitment on OSS would mean that OSSs capable of supporting preordering, ordering, repair and maintenance of unbundled network elements ("UNEs") and UNE combinations, including the UNE platform, would take a minimum of two years to implement. Since it would take a minimum of two years to build OSS that could support UNE platform, and the Joint Applicants commitments to the FCC to provide some form of UNE combinations last only three years, CLECs would be investing time and money in building OSSs that may be useful for a year or less. Indeed it is entirely possible that the OSSs may not be in place before any commitment to provide combinations of UNEs expires. (Tr., pp. 1957-1958). The Joint Applicants' FCC commitments provide a similar OSS roll out period. Thus, even if we require the Joint Applicants to immediately begin providing combinations of UNEs, including UNE platform, CLECs will not be able to sell services on a mass market basis to residential and small business customers for at least two years. That is tantamount to imposing a two year moratorium on residential and small business competition in Illinois and is unacceptable.

Based on the record on reopening, it is clear that there are significant differences between what the Joint Applicants have committed to in Illinois, at the FCC and what SBC has agreed to open its local markets in Texas. It is also clear that the Joint Applicants will not agree to adopt in Illinois conditions, either in whole or in part, that SBC has agreed to adopt to open the local exchange market in Texas. The Joint Applicants appear resolute in their position that this Commission should not allow in Illinois the adoption of agreements to which SBC is a party that have been arbitrated in other states, or adoption of provisions from such arbitrated agreements. The Joint Applicants base their objection on the theory that the Commission would be abrogating its authority if it allowed the adoption of agreements and provisions of agreements arbitrated by other state commissions. SBC-Ameritech Ex. 1.3 (Kahan Direct on Reopening), pp. 6-7, 12-13; SBC-Ameritech Ex. 10.1 (Dysart Supp. Direct on Reopening), pp. 2-3. We disagree.

As an initial matter, we must ask ourselves why customers in Illinois deserve anything less than what SBC has agreed to do in Texas? The answer, of course, is that residential and small business customers in Illinois do not deserve anything less than the best of what SBC offers or is required to offer elsewhere. We see no reason why Illinois residents should not benefit from best available market opening initiatives, whether they come from an arbitrated agreement from another state or terms and conditions that SBC has agreed to provide, including individual provisions of the Proposed Interconnection Agreement ("PIA") from Texas. Given that this Commission has been working to open Illinois's local markets to competition since before the passage of the Telecommunications Act of 1996, we believe that the time has come for more stringent market opening initiatives than we have taken in the past. Accordingly, we reject the Joint Applicants' proposal that CLECs not be allowed to adopt, in whole or in part, provisions from agreements to which SBC is a party which happen to have been arbitrated in

another state. In addition, we set forth below more specific, detailed conditions that must be met be met before we will allow the merger to close.

We take very seriously our charge to consider and impose requirements that will protect the interests of Illinois consumers as well as the Ameritech Illinois. In weighing the evidence before us, we are not convinced that the Illinois commitments, the FCC commitments or the Texas commitments reflect conditions that we believe are necessary to ensure that the proposed merger will not have a significant adverse impact on the local market in Illinois. We are especially concerned about the likely impact the merger will have on residential and small business customers. The Joint Applicants have not mollified our concerns by virtue of their voluntary commitments.

On the other hand, CLECs have presented specific and unrebutted testimony that certain minimum conditions must be ordered to ensure that residential and small business customers will enjoy the benefits of choice that come with a competitive market. We agree with those parties who have argued that the Ameritech Illinois must satisfy certain conditions prior to the merger being approved in order for the Commission to be able to find that the merger will not likely have a significant adverse effect on competition. It is incumbent upon us to articulate as clearly as possible the pre-conditions and requirements that we believe are necessary under Section 7-204(f) for the merger to meet the statutory requirements set forth in 7-204(b)(6). Based on our review of the entire record, we will set out conditions and requirements that are clear cut so that the Joint Applicants will know what is required of them up-front and so as to avoid to the greatest extent possible back sliding on conditions that have been satisfied or nibbling around the edges that is invited by the imposition of ambiguous conditions.

In sum, we find that the Illinois-specific commitments and the FCC commitments made by the Joint Applicants fail to demonstrate by a preponderance of the evidence that the merger is not likely to have an significant adverse effect on competition in the Illinois residential and small business local exchange market. However, we have reviewed the record on reopening and find that there are conditions that have been suggested by various parties that if met prior to the closing of the merger would allow us to make the requisite finding under Section 7-204(b)(6) of the IPUA. Those conditions, which we have the authority to impose pursuant to Section 7-204(f) of the IPUA, are discussed in further detail below.

III. Exception Number Two: The Examiners Erred by Concluding That the Joint Applicants' Interconnection Commitments Have Procompetitive Benefits That Would Not Exist Absent the Merger

The HEPOR errs by concluding that the Joint Applicants' commitments have procompetitive benefits that would not exist absent the merger because it incorrectly assumes that CLECs will have the ability to opt into interconnection arrangements that they would otherwise not have available. As an initial matter, the Joint Applicants have provided no substantive commitments, because what they commit to is nothing more than allowing CLECs to negotiate and request specific interconnection terms and conditions with no commitment that they will be provided unless they are ordered to be provided through arbitration. The "commitments" are nothing more than a promise by the Joint Applicants to comply with

existing law and they do nothing to ensure timely implementation of interconnection terms and conditions that CLECs desire. They provide nothing more than the status quo.

Moreover, the HEPOR is confusing and appears to be internally inconsistent with respect to exactly what it is requiring the Joint Applicants to make available. For example, the HEPOR states that "Joint Applicants have provided the detail we sought, and that the limitations and caveats placed on the commitment are appropriate." HEPOR, p. 50. The HEPOR then goes on to adopt an AT&T proposal that the Joint Applicants be required to any service, interconnection agreements/arrangements that SBC has been ordered to provide in another state. *Id.* Those two findings are at odds with each other because the Joint Applicants' limitations would prohibit importation of terms that flowed from arbitrations. Similarly, the confusion continues at pages 138 of the HEPOR where it is stated that Ameritech be required to provide to CLECs in Illinois UNEs, service, facilities or interconnection agreements which have been imposed on SBC by another state, but on the very next page states that the Commission finds that "excluding from the automatic requirements interconnection arrangements that are imposed upon SBC by arbitration retains for this Commission its ability to review Illinois interconnection agreements from an Illinois perspective, rather than adopting the policies of other states." HEPOR, pp. 138-139. It is impossible to tell from the HEPOR exactly what the Joint Applicants are being required or not required to provide with respect to interconnection.

In addition, the HEPOR would leave to an after-the-merger collaborative the details of what the Joint Applicants must provide based on any out-of-state contracts. That is nothing more than an invitation for delay and disruption and a further barrier to entry. The HEPOR also ignores record evidence that Ameritech has failed to make available shared transport and UNE-P despite various orders of the FCC, this Commission and courts that it do so. Absent its failure to comply with the law, what are the "potentially much broader group of arrangements" that the HEPOR believes would be available as the result of the merger? Even under the commitments, exactly what are the potentially much broader group of arrangements that will be available? The HEPOR doesn't elaborate because it can't. The HEPOR is wrong with respect to its conclusions on the Joint Applicants' interconnection commitments.

Exception Number Two Replacement Language:

For all of the foregoing reasons, the Commission should reject the conclusion and analysis section on pages 50-51 of the HEPOR, and the internally inconsistent language on pages 138-139 of the HEPOR. The "Commission Analysis and Conclusion" on pages of the HEPOR should be deleted and replaced with the following language:

> We have already decided this issue based within the context of our discussion and conclusions regarding the application of Section 7-204(b)(6) above. In sum, we reject the Joint Applicants' proposal that CLECs not be allowed to adopt, in whole or in part, provisions from agreements to which SBC is a party which happen to have been arbitrated in another state. Each and every such agreement, and the individual provisions of such agreements, must be made available by the Joint Applicants on an expedited basis to those Illinois CLECs who desire to opt into any such agreement or provision. Given our findings below with respect to the more specific, detailed conditions that must be met be met before we will allow the merger to close, including pre-conditioning the merger on immediate availability of shared transport, UNE Platform and the immediate development and implementation of third-party and carrier to carrier testing of OSS that will support UNE-P, we believe that agreements and specific provisions of SBC contracts may be of limited use to CLECs since presumably these much broader arrangements which must be made generally available will satisfy to a great extent those services and arrangements that CLECs have been seeking for some time. Nevertheless, we believe that it would be unreasonable to restrict what CLECs can opt into on an expedited basis.

In addition, MCI WorldCom requests that the findings and orderings paragraphs of the HEPOR be changed to reflect the above-referenced proposed changes to the HEPOR.

IV. Exception Number Three: The Examiners Erred by Accepting at Face Value Joint Applicants' Commitments with Respect to Shared Transport

The HEPOR erroneously accepts at face value the Joint Applicants' shared transport commitment as being responsive to the Commission's questions and concerns and sufficiently specific and subject to adequate enforcement mechanisms as to be of value. So as not to burden the record, MCI WorldCom will not detail the many arguments that it and other CLECs have made in this and other proceedings with respect to the availability of shared transport as being essential to the development of meaningful residential and small business local exchange competition. Suffice it to say that the HEPOR's statement that the Joint Applicants have committed to do what Ameritech Illinois has stated it would not do on its own and that the commitment therefore represents a procompetitive benefit is an acknowledgment that the Commission cannot rely on promises to comply with the law in the future. If anything, the HEPOR's admission supports the position of MCI WorldCom that the Commission must

require Ameritech to immediately commence providing shared transport and UNE-P and continue providing those arrangements regardless of what the FCC does in its Rule 319 remand proceeding. In addition, the Commission should require Ameritech to charge no more than the interim rate that the Commission has already set for shared transport in the Ameritech TELRIC proceeding until such time as permanent rates are set for shared transport in the follow-up to the Ameritech TELRIC proceeding.

Exception Number Three Replacement Language:

In the interest of brevity, MCI WorldCom directs the Commission to the language contained in AT&T's Proposed Order on Rehearing in this matter. MCI WorldCom suggests that the first three full paragraphs under the Commission Analysis and Conclusions section of the AT&T Proposed Order be inserted in place of the HEPOR's conclusions with respect to shared transport. In addition, the following language should follow those three paragraphs:

> Ameritech is hereby directed to provide immediately shared transport, and to do so in combination with other UNEs, at the interim rate we set forth in the Ameritech TELRIC proceeding. We will determine the "permanent rate" for shared transport in Phase 2 of the Ameritech TELRIC proceeding. In the meantime, CLECs need some certainty with respect to rates they will pay for shared transport and the interim rate will provide that until will complete phase 2 of the TELRIC proceeding. In addition, we note that the requirement that Ameritech Illinois immediately provide shared transport (and UNE Platform) will remain effective regardless of the outcome of the FCC's 319 proceeding. We have full authority under state law, in particular Sections 7-204(f) and 13-505.6, to impose this requirement.

V. Exception Number Four: The Examiners Erred by Finding That the Joint Applicants' Commitment With Respect to OSS Bring a Procompetitive Benefit that Would Not Be Available Absent the Merger

The HEPOR erroneously concludes that there is no need to appoint a specific entity to perform third party testing of OSS systems as part of this case. Contrary to the focused, specfic information and requirements that the Commission sought on reopening, the HEPOR adopts in toto the Joint Applicants' commitment and calls a collaborative process it expects would lead to agreement on most or all issues. The so-called commitment that the HEPOR adopts ensures that OSS capable of supporting UNE combinations, including UNE-P, will not be available for a minimum of two years. The HEPOR ignores extensive testimony provided by MCI WorldCom witness Lichtenberg in which she set forth the critical need for OSS third party and carrier to carrier testing based on her personal experience and observations of the third party testing of OSS systems taking place in, among other states, New York

and Texas. Ms. Lichtenberg provided detailed side-by-side comparisons of the New York and Texas testing and provided great detail with respect to MCI WorldCom's real world OSS testing experiences.

Ms. Lichtenberg was specifically responsive to the question posed by the Chairman regarding whether third party testing should be conducted and, if so, by what entity. Furthermore, she detailed why competition for residential and small business customers is directly dependent of appropriate and successful third party testing of OSS capable of supporting UNE-P, providing evidence that where it has been tested in New York and UNE-P is available, MCI WorldCom has been successful in selling over 100,000 residential lines. That is evidence that is unrebutted that the Commission should not ignore.

Unfortunately, the HEPOR inexplicably ignores substantial evidence on this critical issue and instead adopts the self-serving and predictable position of SBC and Ameritech that third party testing is not necessary. The HEPOR's conclusion with respect to OSS is tantamount to a finding that there should be no competition in the residential and small business market in Illinois in the foreseeable future. The Commission should reject outright the findings of the HEPOR on this subject. Adoption of the Joint Applicants' position on OSS will ensure that there will be a substantial adverse effect on competition in the local exchange market, directly contrary to the finding that the Commission is obligated to make under 7-204(b)(6) before it can approve this merger.

Exception Number Four Replacement Language:

For all of the reasons set forth the testimony of Sherry Lichtenberg, MCI WorldCom's brief on reopening and this brief on exceptions, the Commission should reject the conclusion and analysis section on pages 72-73 of the HEPOR and replace that with the following language:

Consistent with the unrebutted evidence provided in this proceeding by MCI WorldCom regarding the necessity of third party testing of OSS, we hereby require as a condition of the merger that third party testing and carrier-to-carrier testing of Ameritech's OSSs should commence as soon as possible. Based on the record evidence, we find that the third party testing that has taken place in New York has provided CLECs with the ability to provide services to residential customers on a state-wide basis, even though we realize that testing of Bell Atlantic New York's systems is not yet complete. Nevertheless, the fact that CLECs have some working OSS and have UNE platform available at TELRIC prices without glue charges which allows for the provision of competitive local service to residential and small business customers in that state is enough to convince us that those local market opening initiatives have some track record of success. In this respect, we take comfort in the evidence that shows MCI WorldCom has been able to sell more than 100,000 residential access lines on a state-wide basis in New York. Based on the record before us, that is more than can be said for the OSS testing and local market opening initiatives that have been implemented in other states, including Texas.

For these reasons, we adopt the recommendations of MCI WorldCom that New York style OSS third party testing take place in Illinois as soon as possible. We also announce our intention to engage the third party tester in New York, KPMG, to provide the Commission with a prospectus for third party testing of uniform OSS in Illinois. Of course, other companies that wish to provide a prospectus will be welcome to do so, and ultimately all bids for third party testing will be required to comply with the state's competitive bidding laws, to the extent they are applicable. Our intention is to ensure that uniform OSS capable of supporting commercial volumes of preordering, ordering, provisioning, maintenance and repair and billing for UNE combinations, including UNE platform, will be deployed and available as soon as possible.

We note that the cost of developing, implementing and conducting the third party testing of Ameritech's OSSs must be borne solely by the Joint Applicants. It is the Joint Applicants who stand to accrue the significant financial benefits of this merger. The ability to ensure that Ameritech Illinois' local exchange market is open to competition in a timely fashion is dependent in large part upon the development, implementation and testing of appropriate and uniform OSS systems that will support mass market entry by CLECs to provide service to residential and small business customers. The costs of testing and validating the systems are critical to bringing benefits to Illinois customers, and which will benefit Ameritech Illinois' Section 271 efforts, is appropriately shouldered by the Joint Applicants and can be viewed as one of our requirements as to how merger savings should be allocated.

VI. Exception Number Five: The Examiners Erred by Accepting at Face Value Joint Applicants' Voluntary Commitments Without Also Requiring Pre-Conditions Proposed by CLECs That If Met Prior to the Merger Closing Would Allow the Commission to Find That the Requirements of Section 7-204(b)(6) Would be Satisfied

At pages 132 through 151, the HEPOR enumerates the conditions of approval of the reorganization. In addition to the those commitments or "conditions" that the HEPOR adopted and which MCI WorldCom took exception to above, there are a myriad of pre-conditions that the HEPOR did not discuss but which in MCI WorldCom's opinion are necessary before any finding can be made that Section 7-204(b)(6) has been met.

Before setting forth proposed language on these additional pre-conditions, MCI WorldCom notes that at page 135 of the HEPOR under the heading of "LRSIC & TELRIC" is a condition that requires the filing of revised LRSIC and TELRIC and shared and common cost studies within 6 months of the merger approval. That condition does not appear to be based upon any evidence that was submitted in the reopened phase of this proceeding and MCI WorldCom is not sure why it appears at all in the HEPOR. In any event, MCI WorldCom takes exception to that finding to the extent it contemplates that all of the issues that were litigated in the Ameritech TELRIC proceeding must be relitigated. There are pending follow-up dockets to the TELRIC proceeding which have yet to get started, but which require the

resolution of only very narrow and limited issues -- non-recurring charges, permanent pricing for shared transport, and appropriate non-recurring charges, if any, for combinations of UNEs, including the UNE-P. The follow-up TELRIC proceeding should move forward expeditiously and the Commission should note that in its order here. However, unless new TELRIC studies are submitted which would significantly lower rates for UNEs, interconnection and transport and termination, there is simply no reason to make a blanket requirement that new studies be provided at this juncture. Therefore MCI WorldCom recommends that this "condition" be deleted. To the extent that the Commission is intent on leaving that condition in tact, it should make clear that it fully intends any such studies to be submitted only if they provide reductions in rates for existing UNEs, interconnection and transport and termination.

Exception Number Five Replacement Language:

With MCI WorldCom's objections to the TELRIC study condition out of the way, the following replacement language is suggested to be included under the "Conditions to Approval of the Reorganization" section, should the Commission decide to issue an order granting the application conditionally:

As discussed above, we find that the Illinois-specific commitments and the FCC commitments made by the Joint Applicants do not demonstrate by a preponderance of the evidence that the merger will not be likely to have an significant adverse effect on competition in the Illinois local exchange market. However, we have reviewed the record on reopening and find that there are conditions that have been suggested by parties that if met prior to the closing of the merger would allow us to make the requisite finding under Section 7-204(b)(6) of the IPUA.

We agree with CLEC arguments that immediate availability of shared transport, unrestricted UNE combinations for residential and business customers, including UNE platform, is critical to timely development of competition for residential and business customers, and that the development and implementation of third party test and carrier-to-carrier testing of OSSs is proceed forthwith. In addition to preconditions being met, we believe substantial and self-executing penalties are needed to ensure that Joint Applicants cannot backslide on maintaining compliance with our preconditions and other requirements.

Accordingly, consistent with the record in this proceeding and the authority vested in us by the General Assembly through Section 7-204(f) of the IPUA, we find that the requirements of Section 7-204(b)(6) can be met if Ameritech Illinois meets the following requirements prior to the merger:

Provisioning of shared transport in combination with other UNEs, must be provided immediately at the interim rate we set forth in the Ameritech our TELRIC proceeding, with the permanent rate to be determined in Phase 2 of the TELRIC proceeding. The requirement that Ameritech Illinois provide shared transport (and UNE Platform) will remain effective regardless of the outcome of the FCC's 319 proceeding;

Immediate provisioning of Unbundled Network Element Platform. Ameritech Illinois shall be prohibited from assessing a fee or "glue charge" for the function or action of combining elements that are already combined in its network. Any migration of customers to UNE-platform must occur without disconnection of a customer's service (and therefore without a charge) and without any requirement that a CLEC load data from the Line Information DataBase ("LIDB" is a shared database of calling permissions, such as inbound collect calling, calling card information etc.);

Immediate processing of CLEC requests to transition existing resale customers to the unbundled network element platform at TELRIC prices without any charge being levied by Ameritech for accepting and processing those requests;

Immediate and on-going availability on an unbundled basis, singly or in combination, the following unbundled network elements: local loops, the network interface device, switching, dedicated and shared transport, signaling systems, operations support systems, operator and directory assistance databases, dark fiber, xDSL equipped loops, subloop unbundling, Extended Link Service ("ELS") and Enhanced ELS. These UNEs will continue to be made available regardless of the FCC's findings in its Rule 319 Remand Proceeding. Ameritech Illinois shall also comply with any FCC or Commission order regarding unbundling of any additional elements not listed here. Ameritech Illinois shall also make available all switched-based features, including all CLASS features available now or made available in the future.

Immediate and on-going availability of xDSL-capable loops: Ameritech Illinois shall be required to provide nondiscriminatory access to unbundled local loops capable of supporting all forms of xDSL (including, but not limited, to ADSL, ADSL-Lite, HDSL, SDSL), at TELRIC rates. The loops must be properly conditioned (free of load coils and bridged taps) at no additional cost to CLECs. Ameritech also shall offer a wholesale DSL product to CLECs.

Immediate and on-going availability xDSL-equipped loops: Ameritech Illinois shall be required to provide nondiscriminatory access to any access platform and/or access equipment that has been deployed to deliver high-speed services at TELRIC rates (as described in Condition 1). This shall include, but is not limited to, unbundled local loops equipped with an ILEC-installed DSLAM (which can be located in the ILEC central office or remote terminal) or Digital Loop Carriers capable of providing high-speed services. The point of interconnection for xDSL-equipped loops shall be either the back end of an Ameritech DSLAM or at the point closest to the CLEC's point of presence at the back end of an SBC and/or Ameritech ATM switch.

Immediate and on-going availability spectrum management: Ameritech Illinois shall, in a nondiscriminatory manner, manage the spectral management of the copper network in accordance with the FCC Rules and Guidelines provided by T1E1.4.

Immediate and on-going availability DSL Associated Electronics, Equipment, and Facilities: Ameritech Illinois shall be required to provide CLECs access to any access platform and/or access equipment that has been deployed to deliver high-speed services, either at the central office or the remote terminal. Such access platforms, shall include, but are not limited to, DSLAMs or Digital Loop Carriers capable of providing high-speed services. CLECs shall also be permitted to use Ameritech's transport network, on either a shared or dedicated basis, from the DSLAM to a CLEC's point of presence. Ameritech shall also be required to provide access to its ATM network.

Immediate and on-going availability Collocation: Ameritech shall be required to permit, on a nondiscriminatory basis, collocation of all competitor's equipment for interconnection and/or access to unbundled elements in accordance with the FCC's rules.

Immediate and on-going availability Loop Qualifying Database: At a minimum, Ameritech shall provide access to the same loop qualifying database that it uses (via Electronic Data Interchange ("EDI")). If that database cannot reasonable support competitors, they must upgrade to comply with industry standards.

With respect to non-recurring charges for all UNEs, permanent pricing for shared transport and pricing for network element combinations, those issues are to be resolved expeditiously in Phase 2 of the Ameritech TELRIC proceeding. Until the proceeding is completed, we will require Ameritech Illinois to all stand alone non-recurring charges for individual UNEs that Ameritech had proposed in the original TELRIC proceeding to be reduced by 50% until such time as permanent non-recurring charges can be established.

The aforementioned conditions must be implemented before SBC and Ameritech are permitted to consummate their proposed merger. SBC and Ameritech are directed to demonstrate compliance with each condition as soon as practicable so that the parties can comment on claimed compliance expeditiously and Commission can make a finding of compliance before the parties are authorized to consummate the merger. In addition, SBC and Ameritech shall be required to demonstrate continuing compliance with each of these conditions via reports submitted to the Commission which should be subject to public notice and comment over very short time frames. These conditions shall apply to SBC and Ameritech and any ILEC owned or controlled by SBC or Ameritech, including affiliates providing data services. We decline to set a specific "sunset" date for these conditions. Rather, we believe that it will be appropriate to review the continuing need for these conditions no earlier than three years after the merger is consummated. We believe these conditions are critical to the timely development of local exchange competition in Illinois and, therefore, we find that Ameritech Illinois will have the burden of proving after three years that specific, individual conditions are no longer useful.

In addition to the aforementioned conditions, we require as discussed in more detail above that third party testing and carrier-to-carrier testing of Ameritech's OSSs should commence as soon as possible.

In addition, MCI WorldCom requests that the findings and orderings paragraphs of the HEPOR be changed to reflect the above-referenced proposed changes to the HEPOR.

VII. Conclusion

WHEREFORE, for all of the foregoing reasons, MCI WorldCom respectfully requests that the Commission reject the Hearing Examiners' Proposed Order on Reconsideration. Based on the record on reopening, the Commission can and should reject the proposed merger on the basis that the Joint Applicants have failed to meet their burden of proof with respect to Section 7-204(b)(6) of the Illinois Public Utilities Act. However, if the Commission is inclined to grant the subject to conditions, MCI WorldCom respectfully requests the Commission do so based upon the focused, detailed, specific pre-

conditions that are set forth in the testimony on reopening of MCI WorldCom's witness, MCI WorldCom's brief and proposed order language on reopening, and this brief on exceptions.

Respectfully submitted,

MCI WORLDCOM, Inc.

Dated: August 17, 1999 By: _____

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Its Attorney

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois, and Ameritech Illinois	)	
Metro, Inc.	)	
	)	Docket No. 98-0555
Joint Application for Approval of the	)	
Reorganization of Illinois Bell Telephone	)	
Company d/b/a Ameritech Illinois, and	)	
the Reorganization of Ameritech Illinois	)	
Metro, Inc. in Accordance with Section	)	
7-204 of the Public Utilities Act and for	)	
All Other Appropriate Relief	)	(Reopened)

BRIEF ON EXCEPTIONS IN RESPONSE TO PROPOSED ORDER ON REOPENING OF MCI WORLDCOM, INC.

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